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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,219	04/09/2001	Antonio Montserrat Gibernau	932.1194	8578

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/829,219

Applicant(s)

MONTSERRATE GIBERNAU,  
ANTONIO

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 10 recites the limitation "the sheet of insulating material". There is insufficient antecedent basis for this limitation in the claim. For examination purposes, claim 10 will be understood to depend on claim 2, since claim 2 recites a sheet of insulating material.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5, 11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Levinson (US 4390554).
6. Regarding claim 1, 5, 11, and 13, Levinson teaches a microwave package comprising an outer polyethylene film (film 4 of Figure 1) that has a portion that melts (item 13, Column 4, lines 30-45), an outer paper substrate (column 3, lines 51-54),

as recited in claim 5, attached to an outer face of the outer package (insulation 5 of Figure 1), an inner paper wrapper (item 3 of Figure 1) containing food (item 1 of Figure 1), (Column 3, lines 23-56) wherein a at least one layer of heat-concentrating material that comprises salt absorbed into the inner paper layer and thus a "strip" of heat-concentrating material results as recited in claim 13 (i.e. 14 in layer 3, Column 5, lines 24-42).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 2,6, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable Levinson (US 4390554) as applied to claims 1,5,11 and 13 in view of Borek (US 4219573).

9. Levinson is silent in teaching a heat insulating layer attached to the inner part of the outer package as recited in claim 2 by an adhesive as recited in claim 10 and may be attached to the inner wrapper as recited in claim 6 as two sheets and an insulated material between. However, Borek is relied on as evidence that heat is lost in microwave packages to the microwave floor and teaches providing a heat insulating layer (item 8) glued to the inner part of the outer package to make heating more efficient (Column 3, line 14 to Column 4, line 16 ). Furthermore, the insulating layer comprises

two sheets and insulation material (i.e. corrugated paper , Figures 1 and 2) and may be attached to the inner wrapper. Therefore, it would have been obvious to include a heat-insulating layer glued to the inner part of the outer package since Borek teaches gluing an insulating layer to the outer package will improve heating efficiency. It also would have been obvious to attach the insulating layer to the inner wrapper wherein the layer comprises two sheets and insulation material (i.e. corrugated paper , Figures 1 and 2) since Borek teaches corrugated paper attached to the inner wrapper.

10. Claims 1, 3-5, 7, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engstrom et al. (US 4734288) in view of Cox (US 5679278).

11. Regarding claims 1, 4, 5, 11-14 Engstrom et al. teach a microwave popcorn package comprising an inner wrapper (item 29) , a polyethylene based outer package that melts during heating (item 22, Column 5, line 64 to Column 6, line 43), and a paperboard based substrate as recited in claims 5 and 11 that is equal in size to the outer package as recited in claim 4 (i.e. container 10 attached to the polyethylene, Column 5, lines 37-65). Engstrom et al. further teach a weld line to facilitate opening during heating as recited in claim 12 (item 28) However, Engstrom et al. are silent in teaching a heat-concentrating material as recited in claim 1, providing a sheet of heat insulating material to an inner part of the outer package as recited in claim 2, that may be applied on the outer package as recited in claim 14 , or in a form of as strip as recited in claim 13.

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12. Heat-concentrating materials are well known in the microwave popcorn package art and are used as a means for increasing heat supplied to the popcorn. Cox who also teaches an inner wrapper (item 38), an outer package made of plastic material (i.e. item 40 is made from PET), and a substrate (item 42), like Engstrom et al., is relied on as evidence that heat-concentrating materials, including aluminum, (item 50) that may be applied on the outer package as recited in claim 14 in a form of as strip as recited in claim 13 (Column 6, lines 20-54, Column 5, lines 42-65).

13. Therefore it would have been obvious to provide a heat concentrating layer as recited in claim 1 on the outer package as recited in claim 14 in a form of as strip as recited in claim 13 since Cox teaches it was known to optionally add a heat concentrating layer and one would have been substituting one microwave package design for another for the same purpose: to prepare popcorn in the microwave in a package comprising an inner wrapper, outer plastic package, and substrate attached to an outer face of the outer package.

14. Regarding claim 3, Engstrom et al. teach paper, but are silent in teaching the paper is from a continuous web. Cox, however, teaches the conventionality of the substrate layer being made from a continuous web of paper material (kraft paper (Column 5, line 65 to Column 6, line 2, Figures 6, 7 and 20). Therefore, it would have been obvious to use a substrate layer made from a continuous web of paper material since one would have been substituting one supply of paper based substrate for another for the same purpose: a microwave popcorn package comprising an inner

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wrapper, outer plastic package, and substrate attached to an outer face of the outer package.

15. Regarding claim 7, Engstrom et al. are silent in teaching the heat-concentrating layer is coated on the insulating layer. Cox is relied on as evidence of providing the heat-concentrating layer either on the outer package (item 40) or coating an insulating layer (item 42), which also serves as the substrate (Column 5, line 65 to Column 6, line 2, Column 6, line 20-31, 45-54, Figures 4 and 4a). Therefore it would have been further obvious to coat the insulating layer with the heat-concentrating layer since Cox teaches different locations for the heat concentrating layer and one would have been substituting one conventional microwave package design for another for the same purpose: to prepare popcorn in the microwave in a package comprising an inner wrapper, outer plastic package, and substrate attached to an outer face of the outer package.

16. Claims 2,6, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engstrom et al. (US 4734288) in view of Cox (US 5679278) as applied to claims 1, 3-5, 7,11-14 above, further in view of Borek (US 4219573).

17. Engstrom et al. is silent in teaching a heat insulating layer attached to the inner part of the outer popcorn/oil package as recited in claim 2 by an adhesive as recited in claim 10, and may be attached to the inner wrapper as recited in claim 6 as two sheets and an insulated material between . However, Borek is relied on as evidence that heat is lost in microwave popcorn packages to the microwave floor and teaches providing a heat insulating layer (item 8) glued to the inner part of the outer package to make

heating more efficient (Column 3, line 14 to Column 4, line 16 ). Furthermore, the insulating layer comprises two sheets and insulation material (i.e. corrugated paper , Figures 1 and 2) and may be attached to the inner wrapper. Therefore, it would have been obvious to include a heat insulating layer glued to the inner part of the outer package since Borek teaches gluing an insulating layer to the outer package will improve heating efficiency for microwave popcorn packages and one would have been substituting one package design for another for the same purpose: preparing microwave popcorn. It also would have been obvious to attach the insulating layer to the inner wrapper wherein the layer comprises two sheets and insulation material (i.e. corrugated paper , Figures 1 and 2) since Borek teaches corrugated paper attached to the inner wrapper.

18. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Engstrom et al. (US 4734288) in view of Cox (US 5679278) as applied to claims 1, 3-5, 7, 11-14 above, further in view of Smart et al. (US 4890439).

19. Engstrom et al. modified includes a heat-concentrating layer made from aluminum . Smart et al. are relied on as evidence of the conventional heat-concentrating layer comprising aluminum oxide (Column 6, lines 25-55). Therefore, it would have been obvious to include aluminum oxide since one would have been substituting one type of aluminum-based heat concentrating layer for another for the same purpose.




**Conclusion**

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Turpin (US 537086) and Owens (US 5630959) teach microwave packages with an inner wrapper, outer package, and heat concentrating layer, a substrate, and an insulating layer. Brandberg et al. (US 53171118) also teaches an inner wrapper, outer package, heat concentrating layer, and an insulating layer that is part of the outer package.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

23. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
March 20, 2003 1761  
3/24/03  
for  
M. Cano